

Senate File 2348 - Introduced

SENATE FILE 2348
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3155)

A BILL FOR

1 An Act providing for the licensing and regulation of real
2 estate closing agents, making penalties applicable, and
3 including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535B.1, Code Supplement 2009, is amended
2 to read as follows:

3 **535B.1 Definitions.**

4 As used in this chapter unless the context otherwise
5 requires:

6 1. "*Administrator*" means the superintendent of the division
7 of banking of the department of commerce.

8 2. ~~Reserved.~~ "*Closing agent*" means a person who is not a
9 party to the real estate transaction, who provides real estate
10 closing services.

11 3. "*Licensee*" means a person licensed under this chapter;
12 however, any individual natural person who is acting solely as
13 an employee or agent of a mortgage banker ~~or, mortgage broker,~~
14 or closing agent licensed under this Act chapter need not be
15 separately licensed under this chapter.

16 4. ~~a.~~ "*Mortgage banker*" means a person who does one or more
17 of the following:

18 ~~{1}~~ a. Makes at least four mortgage loans on residential
19 real property located in this state in a calendar year.

20 ~~{2}~~ b. Originates at least four mortgage loans on
21 residential real property located in this state in a calendar
22 year and sells four or more such loans in the secondary market.

23 ~~{3}~~ c. Services at least four mortgage loans on residential
24 real property located in this state. However, a natural
25 person, who services less than fifteen mortgage loans
26 on residential real estate within the state and who does
27 not sell or transfer mortgage loans, is exempt from this
28 ~~subparagraph~~ paragraph if that person is otherwise exempt from
29 the provisions of this chapter.

30 ~~b. "Mortgage banker" does not include a person who is a~~
31 ~~licensed mortgage loan originator under chapter 535D.~~

32 5. "*Mortgage broker*" means a person who arranges or
33 negotiates, or attempts to arrange or negotiate, at least four
34 mortgage loans or commitments for four or more such loans on
35 residential real property located in this state in a calendar

1 year. ~~"Mortgage broker" does not include a person who is a~~
2 ~~licensed mortgage loan originator under chapter 535D.~~

3 6. "Mortgage loan" means a loan of money secured by a lien
4 on residential real property and includes a refinancing of a
5 contract of sale, an assumption of a prior mortgage loan, and a
6 refinancing of a prior mortgage loan.

7 7. "Party to the real estate transaction" means, with respect
8 to a particular real estate transaction, a lender, seller,
9 purchaser, or borrower.

10 ~~7.~~ 8. "Person" means an individual a natural person,
11 an association, joint venture or joint stock company,
12 partnership, limited partnership, business corporation,
13 nonprofit corporation, or any other group of individuals
14 however organized.

15 ~~8.~~ 9. "Natural person" means an individual who is not
16 an association, joint venture, or joint stock company,
17 partnership, limited partnership, business corporation,
18 nonprofit corporation, other business entity, or any other
19 group of individuals or business entities, however organized.

20 ~~9.~~ 10. "Registrant" means a person registered under section
21 535B.3.

22 11. "Real estate closing services" means the administrative
23 and clerical services required to carry out the conveyance or
24 transfer of real estate or an interest in real estate located
25 in this state to a purchaser or lender. "Real estate closing
26 services" include but are not limited to preparing settlement
27 statements, determining that all closing documents conform
28 to the parties' contract requirements, ascertaining that the
29 lender's instructions have been satisfied, conducting a closing
30 conference, receiving and disbursing funds, and completing
31 form documents and instruments selected by and in accordance
32 with instructions of the parties to the transaction. "Real
33 estate closing services" do not include performing solely notary
34 functions.

35 12. "Residential real estate" means the same as defined in

1 section 535D.3.

2 ~~10.~~ 13. "*Residential real property*" means real property,
3 which is an owner-occupied single-family or two-family
4 dwelling, located in this state, occupied or used or intended
5 to be occupied or used for residential purposes, including an
6 interest in any real property covered under chapter 499B.

7 14. "*Trust account*" means a checking account with a
8 federally insured bank, savings and loan association, credit
9 union, or savings bank, which is used exclusively for the
10 deposit of funds transferred electronically or otherwise, cash,
11 money orders, or negotiable instruments that are received by a
12 closing agent to effect a real estate closing.

13 Sec. 2. Section 535B.2, Code 2009, is amended to read as
14 follows:

15 **535B.2 Exemptions.**

16 This chapter, except for sections 535B.3, 535B.11, 535B.12,
17 and 535B.13, does not apply to any of the following:

18 1. A bank, bank holding company, savings bank, savings
19 and loan association, or credit union organized under the
20 laws of this state, another state, or the United States, or a
21 subsidiary owned or controlled by such a bank, bank holding
22 company, savings bank, savings and loan association, or credit
23 union.

24 2. A loan company licensed under chapter 536 or 536A, except
25 when acting as a closing agent.

26 3. An insurance company or a subsidiary or affiliate of
27 an insurance company organized under the laws of this state,
28 another state, or the United States, and subject to regulation
29 by the commissioner of insurance.

30 4. Mortgage lenders or mortgage bankers maintaining an
31 office in this state whose principal business in this state is
32 conducted with or through mortgage lenders or mortgage bankers
33 otherwise exempt under this section and which maintain a place
34 of business in this state.

35 5. An individual who is employed by a person otherwise

1 exempt under this section, or who, by contract, operates
2 exclusively on behalf of a person otherwise exempt under this
3 section to the extent that the individual is acting within the
4 scope of the individual's employment or exclusive contract with
5 the exempt person and is acting within the scope of the exempt
6 person's charter, license, authority, approval, or certificate.

7 6. A real estate broker licensed under chapter 543B while
8 engaged in practice as a real estate broker.

9 7. A nonprofit organization qualifying for tax-exempt
10 status under the Internal Revenue Code as defined in section
11 422.3 which offers housing services to low and moderate income
12 families.

13 8. An attorney licensed to practice law in this state or
14 the attorney's employees or agents acting under the attorney's
15 direction, in a transaction where the conduct of the attorney
16 is regulated by the Iowa supreme court in its capacity as
17 disciplinary authority over attorneys.

18 9. An officer or employee of the federal government, any
19 state government, or a political subdivision of the state
20 acting in an official capacity.

21 10. A qualified intermediary or an exchange accommodation
22 titleholder facilitating an exchange under section 1031 of the
23 Internal Revenue Code whose role in the transaction is limited
24 to acting in such a capacity.

25 Sec. 3. NEW SECTION. 535B.2A Closing agents affiliated with
26 attorneys.

27 1. A closing agent affiliated with an attorney is not exempt
28 from licensure under this chapter if the closing agent engages
29 in transactions not exempt under section 535B.2, subsection 8.

30 2. Licensure under, and compliance with the provisions of,
31 this chapter shall not exempt any attorney from discipline by
32 the Iowa supreme court in its capacity as regulatory authority
33 over attorneys licensed to practice in this state, nor from
34 discipline by the regulatory authorities over attorneys
35 licensed in other jurisdictions.

1 3. If a complaint is filed with the administrator against a
 2 closing agent affiliated with an attorney licensed to practice
 3 in this state, the administrator shall promptly give notice of
 4 the complaint to the Iowa supreme court or its designee, and
 5 cooperate in any disciplinary investigation which the court
 6 initiates against the attorney. On request of the court, the
 7 administrator shall stay any pending disciplinary action to the
 8 extent that the court determines necessary to avoid prejudice
 9 to a disciplinary action against the attorney.

10 Sec. 4. Section 535B.4, Code Supplement 2009, is amended to
 11 read as follows:

12 **535B.4 General licensing requirements.**

13 1. A person shall not act as a mortgage banker, ~~or~~ mortgage
 14 broker, or closing agent in this state or use the title
 15 "*mortgage banker*" or "*mortgage broker*" without first obtaining a
 16 license from the administrator.

17 2. a. License applicants shall submit to the administrator
 18 an application on forms provided by the administrator. The
 19 forms shall include, at a minimum, all addresses at which
 20 business is to be conducted, the names and titles of each
 21 director and principal officers of the business, and a
 22 description of the activities of the applicant in such detail
 23 as the administrator may require.

24 b. The administrator may require applicants and licensees to
 25 be licensed through the nationwide mortgage licensing system
 26 and registry as defined in section 535D.3, and may participate
 27 in the nationwide mortgage licensing system and registry if
 28 this requirement is implemented. In the event the requirement
 29 is implemented, the administrator may establish by rule or
 30 order new requirements as necessary and appropriate, including
 31 but not limited to requirements that applicants, and officers,
 32 directors, and others in a position of authority in relation to
 33 the applicant, submit to fingerprinting and criminal history
 34 checks, and pay associated fees relating thereto.

35 3. The applicant shall also submit a recently prepared

1 certified financial statement.

2 4. The applicant for an initial license shall submit a fee
3 in the amount of five hundred dollars.

4 5. Licenses granted under this chapter are not assignable.

5 6. Licenses granted under this chapter expire on the next
6 December 31 after their issuance.

7 7. Applications for renewals of licenses under this chapter
8 must be filed with the administrator before December 1 of the
9 year of expiration on forms prescribed by the administrator.
10 A renewal application must be accompanied by a fee of two
11 hundred dollars for a license to transact business solely as
12 a mortgage broker, ~~and~~ four hundred dollars for a license
13 to transact business as a mortgage banker, and four hundred
14 dollars for a licensee to transact business as a closing agent.
15 The administrator may assess a late fee of ten dollars per day
16 for applications or registrations accepted for processing after
17 December 1.

18 8. A mortgage banker or mortgage broker licensee shall not
19 conduct business under any other name than that given in the
20 license. A fictitious name may be used, but a mortgage banker
21 or mortgage broker licensee shall conduct business only under
22 one name at a time. However, the administrator may issue more
23 than one license to the same person to conduct business under
24 different names at the same time upon compliance for each such
25 additional mortgage banker or mortgage broker license with
26 all of the provisions of this chapter governing an original
27 issuance of a license.

28 9. In addition to the application and renewal fees provided
29 for in subsections 4 and 7, the administrator may assess
30 application and renewal fees for each branch location of the
31 licensee, sponsor fees, and change of sponsor fees.

32 Sec. 5. Section 535B.5, subsection 1, Code 2009, is amended
33 to read as follows:

34 1. Upon the filing of an application for a license, if
35 the administrator finds that the financial responsibility,

1 character, and general fitness of the applicant and of the
 2 members thereof if the applicant is a partnership, association,
 3 or other organization and of the officers, directors, and
 4 principal employees if the applicant is a corporation, are
 5 such as to warrant belief that the business will be operated
 6 honestly, soundly, and efficiently in the public interest
 7 consistent with the purposes of this chapter, the administrator
 8 shall issue the applicant a license ~~to engage in mortgage~~
 9 ~~lending, brokering, and servicing~~ as a mortgage broker,
 10 mortgage banker, or closing agent. The administrator shall
 11 approve or deny an application for a license within ninety days
 12 after the filing of the application for a license.

13 Sec. 6. Section 535B.8, Code Supplement 2009, is amended to
 14 read as follows:

15 **535B.8 Operating without a license.**

16 A person who, without first obtaining a license under
 17 this chapter, engages in the business or occupation of, or
 18 advertises or holds the person out as, or claims to be, or
 19 temporarily acts as, a mortgage banker, ~~or mortgage broker,~~ or
 20 closing agent in this state is guilty of a class "D" felony and
 21 may be prosecuted by the attorney general or a county attorney.

22 Sec. 7. Section 535B.9, Code Supplement 2009, is amended to
 23 read as follows:

24 **535B.9 Bonds required of license applicants.**

25 1. An applicant for a license shall file with the
 26 administrator a bond furnished by a surety company authorized
 27 to do business in this state, together with evidence of whether
 28 the applicant is seeking to transact business as a mortgage
 29 broker, ~~or as a mortgage banker,~~ or closing agent. Until
 30 such time as the superintendent pursuant to administrative
 31 rule determines a bond amount that reflects the dollar value
 32 of loans originated, the bond shall be in the amount of one
 33 hundred thousand dollars for applicants seeking to transact
 34 business as a mortgage broker or mortgage banker. For
 35 applicants seeking to transact business as a closing agent,

1 the bond shall be in the amount of twenty-five thousand
 2 dollars, unless the administrator by rule establishes a higher
 3 bond amount. The bond shall be continuous in nature until
 4 canceled by the surety with not less than thirty days' notice
 5 in writing to the mortgage broker, ~~or~~ mortgage banker, or
 6 closing agent and to the administrator indicating the surety's
 7 intention to cancel the bond on a specific date. The bond
 8 shall be for the use of the state and any persons who may have
 9 causes of action against the applicant. ~~The~~ For applicants
 10 seeking to transact business as a mortgage broker or mortgage
 11 banker, the bond shall be conditioned upon the applicant's
 12 faithfully conforming to and abiding by this chapter and any
 13 rules adopted under this chapter and shall require that the
 14 surety pay to the state and to any persons all moneys that
 15 become due or owing to the state and to the persons from the
 16 applicant by virtue of this chapter.

17 1A. For applicants seeking to transact business as a closing
 18 agent, the bond shall be conditioned upon the applicant's
 19 faithfully conforming to and abiding by this chapter and any
 20 rules adopted under this chapter and shall require that the
 21 surety pay to the state all moneys that become due or owing to
 22 the state from the applicant by virtue of this chapter.

23 2. In lieu of filing a bond, the applicant may pledge an
 24 alternative form of collateral acceptable to the administrator,
 25 if the alternative collateral provides protection to the state
 26 and any aggrieved person that is equivalent to that provided
 27 by a bond.

28 3. A licensee may not act as a closing agent unless the bond
 29 requirements in this section are in place at the time of a real
 30 estate closing.

31 Sec. 8. Section 535B.13, Code 2009, is amended by striking
 32 the section and inserting in lieu thereof the following:

33 **535B.13 Civil enforcement authority.**

34 1. If the administrator believes that a person has
 35 engaged in, or is about to engage in, an act or practice that

1 constitutes or will constitute a violation of this chapter,
2 the administrator may apply to the district court for an
3 order enjoining such act or practice. Upon showing by the
4 administrator that such person has engaged, or is about to
5 engage, in any such act or practice, the district court shall
6 grant an injunction.

7 2. The administrator may investigate or initiate a
8 complaint against a person who is not licensed under this
9 chapter to determine whether the person is violating this
10 chapter.

11 3. In addition to or as an alternative to applying to the
12 district court for an injunction, the administrator may issue
13 an order to a person who is not licensed under this chapter to
14 require compliance with this chapter, including to cease and
15 desist from conducting business or from any harmful activities
16 or violations of law or regulation; may impose a civil penalty
17 against such person for any violation of this chapter in an
18 amount up to five thousand dollars for each violation; may
19 order the person to pay restitution; and may order the person
20 to pay the costs for the investigation and prosecution of the
21 enforcement action including attorney fees.

22 4. Before issuing an order under subsection 3, the
23 administrator shall provide the person written notice and
24 the opportunity to request a hearing. The hearing must be
25 requested within thirty days after receipt of the notice
26 and shall be conducted in the same manner as provided for
27 in disciplinary proceedings involving a licensee under this
28 chapter.

29 5. A person aggrieved by the imposition of a civil penalty
30 under subsection 3 may seek judicial review pursuant to section
31 17A.19.

32 6. An action to enforce an order under this section may be
33 joined with an action for an injunction.

34 7. This chapter does not limit the power of the attorney
35 general to determine that any other practice is unlawful under

1 the Iowa consumer fraud Act contained in section 714.16, and to
2 file an action under that section.

3 Sec. 9. Section 535B.14, Code Supplement 2009, is amended
4 by striking the section and inserting in lieu thereof the
5 following:

6 **535B.14 Administrative authority.**

7 The administrator shall have broad administrative authority
8 to administer, interpret, and enforce this chapter and
9 to promulgate rules implementing this chapter, including
10 rules providing the grounds for denial of a license based
11 on information received as a result of a background check,
12 character and fitness grounds, and any other grounds for which
13 a licensee may be disciplined.

14 Sec. 10. NEW SECTION. **535B.19 Trust account requirements**
15 **for closing agents.**

16 A licensee acting as a closing agent shall comply with all
17 of the following:

18 1. All moneys received for disbursement during a real
19 estate closing shall be deposited in a trust account and, when
20 deposited, the moneys shall be designated as trust funds or
21 trust accounts or under some other appropriate name indicating
22 that the moneys are not the moneys of the licensee.

23 2. All trust account moneys shall be deposited in a
24 financial institution that is insured by the federal deposit
25 insurance corporation or national credit union share insurance
26 fund unless the transaction does not involve residential real
27 estate and another financial institution has been designated in
28 writing in the escrow instructions.

29 3. If the trust account earns interest and the interest
30 earned is retained by any party other than the party to the
31 real estate transaction who is the owner of the funds, the
32 licensee shall disclose this fact in writing to the parties to
33 the transaction.

34 4. A licensee shall enter into a written agreement to pay
35 interest to a party to a transaction, or to a third party if

1 requested by the parties to a transaction, if the client's
2 trust funds can earn net interest. In determining whether a
3 client can earn net interest on funds placed in trust, the
4 licensee shall take into consideration all relevant factors
5 including the following:

6 a. The amount of interest that the funds would earn
7 during the period in which they are reasonably expected to be
8 deposited.

9 b. The cost of establishing and administering an individual
10 interest-bearing trust account in which the interest would be
11 transmitted to the client, including any needed tax forms.

12 c. The capability of the financial institution to calculate
13 and pay interest to individual clients through subaccounting
14 or otherwise.

15 5. The licensee shall notify the administrator of the name
16 of each financial institution in which a trust account is
17 maintained and the name of the account on forms acceptable to
18 the administrator. A licensee may maintain more than one trust
19 account provided it advises the administrator of the multiple
20 accounts.

21 6. A licensee shall only deposit trust funds in a trust
22 account and shall not commingle the licensee's personal funds
23 or other funds in the trust account with the exception that a
24 licensee may deposit and keep a sum not to exceed one thousand
25 dollars in the trust account from the licensee's personal
26 funds, which sum shall be specifically identified and deposited
27 to cover bank service charges relating to the trust account or
28 to advance funds to pay incidental fees as permitted in section
29 535B.20, subsection 2.

30 7. Moneys deposited in a trust account are not subject to
31 execution or attachment or to any claim against the licensee.

32 8. A licensee shall not knowingly keep or cause to be
33 kept any money in any bank, credit union, or other financial
34 institution under any name designating the moneys as belonging
35 to a client of the licensee, unless the money was actually

1 entrusted to the licensee for deposit in trust.

2 Sec. 11. NEW SECTION. 535B.20 Disbursing from a trust
3 account.

4 A licensee acting as a closing agent shall not make, in a
5 real estate closing, a disbursement from a trust account on
6 behalf of another person, unless the following conditions are
7 met:

1. The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been transferred electronically to or deposited into the trust account of the closing agent and are available for withdrawal and disbursement, or have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day after the date of disbursement.

15 2. Nothing in this section prohibits a closing agent
16 licensee from advancing funds not exceeding one thousand
17 dollars from a trust account or otherwise on behalf of a party
18 to a real estate closing for the purpose of paying incidental
19 fees, such as conveyance and recording fees, in order to effect
20 and close the sale, purchase, exchange, transfer, encumbrance,
21 or lease of residential real property that is the subject of
22 the real estate closing.

23 Sec. 12. REPEAL. Section 535B.17, Code Supplement 2009, is
24 repealed.

25 Sec. 13. EFFECTIVE DATE. This Act takes effect July 1,
26 2011.

27 EXPLANATION

28 This bill adds provisions relating to the licensure and
29 regulation of real estate closing agents to Code chapter 535B,
30 which currently provides for the licensure and regulation of
31 mortgage bankers and mortgage brokers.

32 The bill makes several changes to definitions applicable to
33 the Code chapter. The bill clarifies that a natural person
34 acting solely as an employee or agent of a mortgage banker,
35 mortgage broker, or closing agent need not be separately

1 licensed under Code chapter 535, and deletes provisions that
2 a person who is a licensed mortgage loan originator pursuant
3 to Code chapter 535D is not included within the definition
4 of a mortgage banker or mortgage broker. The bill defines
5 a "closing agent" as a person not a party to a real estate
6 transaction who provides real estate closing services, and
7 provides associated definitions of "party to the real estate
8 transaction", "real estate closing services", "residential real
9 estate", and "trust account".

10 The bill qualifies a current exemption from most provisions
11 of Code chapter 535B applicable to loan companies to apply the
12 exemption to such companies except when acting as a closing
13 agent. The bill adds exemptions for licensed attorneys;
14 federal, state, and local officers or employees acting in their
15 official capacities; and qualified intermediaries or exchange
16 accommodation titleholders facilitating an exchange pursuant to
17 Internal Revenue Code section 1031.

18 The bill provides that a closing agent affiliated with an
19 attorney is not exempt from licensure if the closing agent
20 engages in transactions which do not fall under the attorney's
21 own exemption. This would entail acting other than pursuant to
22 the attorney's direction in a transaction where the attorney's
23 conduct is regulated by the Iowa supreme court. The bill
24 also provides that licensure under or compliance with Code
25 chapter 535B will not exempt an attorney from the Iowa supreme
26 court's regulatory authority, or that of another jurisdiction.
27 The bill specifies procedures relating to notification of a
28 complaint filed against a closing agent affiliated with an
29 attorney to the Iowa supreme court.

30 The bill adds references to closing agents to provisions
31 and requirements relating to general licensing, penalties for
32 unauthorized practice, and bonding. The bill establishes
33 a bond requirement of \$25,000 for applicants seeking to
34 transact business as a closing agent. The bill clarifies that
35 provisions regarding conducting business under any other name

1 than that specified in a license apply to mortgage banker and
2 mortgage broker licensees.

3 The bill adds new provisions concerning the civil
4 enforcement authority of the superintendent of the division
5 of banking acting as the administrator of the chapter's
6 provisions. The authority encompasses injunctive relief,
7 investigative authority, cease and desist orders, civil
8 penalties, and notice and hearing provisions. The bill also
9 adds new provisions granting broad administrative authority to
10 the administrator.

11 The bill imposes trust account requirements applicable
12 to closing agents and conditions governing the making of
13 disbursements from such trust accounts in a real estate
14 closing.

15 The bill takes effect July 1, 2011.